



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

OFFICE OF
GENERAL COUNSEL

September 25, 2019

Ms. Allison Kole
Counsel for Documented
MuckRock - DEPT MR 40087
411A Highland Ave.
Somerville, MA 02144-2516

Re: Freedom of Information Act Appeal No. EPA-HQ-2019-007506 (Request No. EPA-HQ-2017-009538)

Dear Ms. Kole:

I am responding to your July 23, 2019 Freedom of Information Act (FOIA) appeal, filed on behalf of Nick Surgey. You appealed the June 6, 2019, final response to Mr. Surgey's request issued by Elizabeth White, Director of the Office of Executive Secretariat (OEX) within the Office of the Administrator of the Environmental Protection Agency. The July 18, 2017, request sought "copies of prepared remarks (talking points, written speeches, scripts, powerpoint presentations, etc.) for EPA Administrator Scott Pruitt when he has attended external events." Request at 1.

On June 6, 2019, EPA issued its final response to EPA-HQ-2017-009538. The final response letter indicated that a search for records responsive to your request produced 94 pages of records. EPA determined that all 94 pages of records were exempt from disclosure pursuant to Exemption 5 of the FOIA, specifically, the Deliberative Process Privilege. 5 U.S.C. § 552(b)(5).

Your appeal challenges the withholding of the 94 records. Appeal at 1-6. Your appeal raised no other issues. I have carefully considered your request, EPA's response, and your appeal. I have determined that your appeal should be, and is, granted in part and denied in part.

Your appeal is denied with respect to the application of Exemption 5 of the FOIA to the records located. You argue that EPA has erroneously applied the deliberative process privilege to responsive records, and further argue that "EPA failed to provide an adequate description of the reasons for withholding responsive records in their entirety." Appeal at 6. I have determined that much of the withheld material is exempt from disclosure under Exemption 5 of the FOIA. However, your appeal is granted in part because I have determined that OEX did not reasonably segregate, non-exempt portions of the records.

Accordingly, pursuant to 40 C.F.R. § 2.104(k) I am remanding your FOIA request to OEX to review the withheld records and release any reasonably segregable, non-exempt portions to you. OEX will contact you within ten business days of this letter to provide you with a timeline for completion.

This letter constitutes EPA's final determination on this matter. Pursuant to 5 U.S.C. § 552(a)(4)(B), you may obtain judicial review of this determination by filing a complaint in the United States District Court for the district in which you reside or have your principal place of business, or the district in which the records are situated, or in the District of Columbia. Additionally, as part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) within the National Archives and Records Administration was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, Room 2510, 8610 Adelphi Road, College Park, MD, 20740-6001; e-mail, ogis@nara.gov; telephone, (202) 741-5770 or 1-877-684-6448; and facsimile, (202) 741-5769.

Should you have any questions concerning this matter, please call Marissa Pisarick at (202) 564-0298.

Sincerely,

A handwritten signature in blue ink, appearing to read 'K Miller', is written over a horizontal line.

Kevin M. Miller
Assistant General Counsel
General Law Office

cc: Beth White, Office of the Executive Secretariat, Office of the Administrator